

STATE OF MICHIGAN  
IN THE SUPREME COURT  
APPEAL FROM THE COURT OF APPEALS

IN RE PETITION BY TREASURER OF  
WAYNE COUNTY FOR FORECLOSURE

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WAYNE COUNTY TREASURER,

Petitioner,

and

MATTHEW TATARIAN and  
MICHAEL KELLY,

Intervening Parties-Appellants,

vs.

PERFECTING CHURCH,

Respondent-Appellee.

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Supreme Court No. 129341

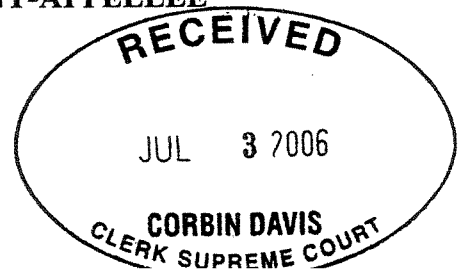
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SUPPLEMENTAL BRIEF ON APPEAL – RESPONDENT-APPELLEE

ORAL ARGUMENT REQUESTED



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## INTRODUCTION

In its *Brief on Appeal*, the Wayne County Treasurer (the “Treasurer”) argues that this case is governed by the General Property Tax Act (“GPTA”), MCL 211.1, *et seq.*, as amended by 2003 PA 263. Most relevantly, the Treasurer asserts that § 78k(5)(g) of the GPTA, MCL 211.78k(5)(g), which limits a circuit court’s jurisdiction to modify, stay, or hold invalid a judgment of foreclosure once such a judgment is entered, must be addressed in this case.

Contrary to these assertions, this case should be governed by the version of the statute that was in effect at the time the Treasurer filed its *Petition*, June 14, 2002, which was that as amended by 2001 PA 101. 2003 PA 263, which contained the addition of § 78k(5)(g), did not take effect until after the judgment of foreclosure had already been entered by the Wayne County Circuit Court.

Further, even if § 78k(5)(g) is applicable to the case at bar, it does not change the analysis presented by Perfecting Church in its *Brief on Appeal*. Whether by § 78l alone or in conjunction with § 78k(5)(g), any interpretation of the GPTA which results in Perfecting Church being deprived of its property without notice and a hearing runs afoul of the Due Process Clause. Either the statute must be interpreted consistently with the federal and state constitutions so that a deprived party may seek relief from a judgment entered in violation of the Due Process Clause, or the statutory scheme itself is unconstitutional. Any other result violates the Due Process Clause.

## ARGUMENT

- A. This action is governed by the GPTA as amended by 2001 PA 101, not 2003 PA 263, because 2003 PA 263 was not effective on the date the *Petition* was filed.**

For the first time in this litigation, the Treasurer has raised the suggestion that the amendments to the GPTA contained in 2003 PA 263 (effective January 5, 2004) governs this

action, instead of those in 2001 PA 101. The Treasurer asserts that this most recent act applies because it was effective before Perfecting Church filed its *Motion for Relief from Judgment*, on May 14, 2004. However, the Treasurer cites no authority for that proposition. Instead, case law suggests that 2001 PA 101 (effective July 30, 2001) – the last amendment to the GPTA effective when the Treasurer’s *Petition* was filed on June 14, 2002 – governs this action.

In general, Michigan courts apply the rule that a cause of action is governed by the statute in force when the cause of action arises. *Hill v General Motors Acceptance Corp*, 207 Mich App 504, 513-514; 525 NW2d 905 (1994). Indeed, this is how the Michigan Court of Appeals addressed this question in *In re Petition by the Wayne County Treasurer (Wayne County Treasurer v Westhaven Manor Limited Dividend Housing Assn)*, 265 Mich App 285, 287 n 1; 698 NW2d 879 (2005) (“*Westhaven*”). In *Westhaven*, the petition was filed on June 14, 2001. *Westhaven, supra* at 288. The relevant motion for relief from judgment was filed on March 3, 2003. *Westhaven, supra* at 289. 2001 PA 101 took effect on June 30, 2001, *after* the petition was filed but *well before* Westhaven Manor’s motion for relief from judgment. Nonetheless, the Court of Appeals applied “the statutes in effect at the time the petition was filed, June 14, 2001.” *Westhaven, supra* at 287 n 1. Similarly, the GPTA as last amended by 2001 PA 101 – the last amendment effective before the *Petition* was filed in this case – should govern this action.<sup>1</sup>

Effective January 5, 2004, 2003 PA 263 added MCL 211.78k(5)(g) to the GPTA. That section states:

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<sup>1</sup> For this reason, the Treasurer is also incorrect when it asserts that Perfecting Church is attempting to appeal or re-litigate *Westhaven*. *Westhaven* was governed by an earlier amendment to the GPTA – 1999 PA 123 – and was disposed of by the Court of Appeals because of factual questions not present in this case. Admittedly, *Westhaven* is not controlling on this Court. However, portions of the *Westhaven* decision are well-reasoned, relevant, and persuasive, and it is for this reason that Perfecting Church refers to *Westhaven* in its *Brief on Appeal*.

A judgment entered under this section is a final order with respect to property affected by the judgment and except as provided in subsection (7) shall not be modified, stayed, or held invalid after the March 31 immediately succeeding the entry of a judgment foreclosing property under this section, or for contested cases 21 days after the entry of a judgment foreclosing the property under this section.

If § 78k(5)(g) is substantive, as suggested by the Treasurer (*Treasurer's Brief on Appeal*, p 15), then it does not operate retroactively to apply to this case. *Travis v Preston*, 249 Mich App 338, 345; 643 NW2d 235 (2002). On the other hand, as § 78k(5)(g) is a statute explicitly restricting the jurisdiction of the circuit courts, this Court could decide that it is procedural in nature. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 474; 628 NW2d 577 (2001) (the statute in question “is a jurisdictional statute and thus procedural in nature ...”). As a procedural statute, although it *might* be applied retroactively, § 78k(5)(g) would be unconstitutional because it conflicts with MCR 2.612(C), and this Court has sole constitutional authority over matters of practice and procedure. *McDougall v Schanz*, 461 Mich 15, 27; 597 NW2d 148 (1999); Const 1963, art 6, § 5. *See also* Perfecting Church's *Brief on Appeal*, pp 7-8 (discussing this Court's exclusive constitutional authority over matters of practice and procedure). Therefore, whether deemed substantive or procedural, § 78k(5)(g), as added to the GPTA by 2003 PA 263, does not apply to the current case.

**B. Even if 2003 PA 263 and MCL 211.78k(5)(g) apply to this action, the arguments in Perfecting Church's *Brief on Appeal* remain essentially unchanged.**

This Court asked the parties to address the relationship between MCL 211.78l, MCR 2.612(C), and the Due Process Clause, with no mention of § 78k(5)(g). However, even if this Court were to decide that § 78k(5)(g) applies to this action – because 2003 PA 263 somehow governs – the arguments presented in Perfecting Church's *Brief on Appeal* remain essentially unchanged.

As noted in the *Amicus Brief* of Westhaven Manor (p 11 n 2), § 78k(5)(g) renders a judgment of foreclosure almost immediately incapable of being modified, stayed, or held invalid. If this statute applied to Perfecting Church – or any party who had never received any notice whatsoever of the pending foreclosure action – then such a party will have been deprived of its property without due process of law, and will be ultimately barred from seeking any redress for this beyond a claim for money damages in the Court of Claims (and that only if the party learns of the foreclosure within two years, per § 78l(3)).

Perfecting Church refers to its principal *Brief on Appeal* at pages 17-23 for a discussion of the procedural protections preserved in §§ 78(2) and 78i(2), and why MCR 2.612(C) should govern proceedings when the circuit court determines that a party's due process rights were violated. Any other interpretation renders the statute unconstitutional, and if such an interpretation is adopted, the statute must be struck down.

## CONCLUSION

This Court should not apply the amendments of 2003 PA 263 to this case because that act took effect after the *Petition* was filed by the Treasurer. However, if it does apply, the arguments contained in Perfecting Church's *Brief on Appeal* remain the same. Any interpretation of the statute which results in Perfecting Church being deprived of its property cannot be reconciled with the Due Process Clause because Perfecting Church did not receive notice and an opportunity to respond and redeem before the judgment of foreclosure was entered. Therefore, either the GPTA must be interpreted to allow such a deprived party to file a motion for relief from judgment under MCR 2.612(C), or the statute must be unconstitutional. Any other result violates the Due Process Clause.

Respectfully submitted,

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